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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1942.

No. 363.

S. R. BRACKIN, PETITIONER,

v.

THE UNITED STATES.

*On a Petition for a Writ of Certiorari to the
Court of Claims.*

REPLY BRIEF OF PETITIONER.

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The petition was filed August 31, 1942. Respondent filed its brief in opposition on or about October 6, 1942. This brief is in reply to respondent's brief.

Respondent states (Br. 6) that "no funds received in connection with the pool were covered into the general fund of the Treasury and the United States did not profit or receive any benefit from the operation of the pools." This was a conclusion of the Court of Claims set out as a finding of fact (Finding 10-R. 9), but it is difficult to harmonize it with the finding (F. 19-R. 12) that the check with which petitioner purchased his certificates, after being deposited in the Treas-

sury, was endorsed as follows: "This check is in payment of an obligation to the United States and must be paid at par, W. A. Julian, Treasurer, U. S."

Respondent was doubtless so concerned about this inconsistency in the Court's findings that it caused a letter of inquiry to be addressed to the Secretary of the Treasury by the Attorney General inquiring as to the status of the money collected by the Secretary of Agriculture for the sale of exemption certificates through the pools (pp. 25-6 of the petition herein). After receiving a reply thereto from the Acting Secretary (pp. 26-30 of the petition herein), respondent then decided to call to the attention of the Court of Claims the apparent error in its findings. (See pp. 6-7 of the petition herein.) The motion which respondent filed in this connection was untimely and the Court of Claims denied it forthwith. It is apparent that the findings and conclusion of the Court of Claims were not only wrong, but that respondent in effect now concedes it.

Of course, respondent does not desire to occupy an inconsistent position, but the footnote on page 6 of its brief is an unsatisfactory explanation of its present position. It there states that "the Court of Claims refused to reconsider these findings in the light of the correspondence, set forth at pp. 25-30 of the petition" and that "that correspondence was submitted to the Court of Claims merely out of an abundance of caution." There is no ground for stating that the Court of Claims *refused to reconsider* its findings. All that the record shows is (R. 21) that respondent's motion was filed *out of time* (under the Court's rules) and was overruled. In view of these facts, it must appear that respondent in effect admits that the decision of the Court of Claims is in error. Such being the case, the petition should be granted.

Since respondent relies on its brief in opposition to the petition for certiorari in *J. H. Crain et al. v. United States*, No. 199 present term, as discussing "the same question" that is involved herein, it seems only fair to request this Court to consider in connection with this petition the reasons for granting

the writ set out by petitioner in that case, as well as the reply brief of the petitioner.

WHEREFORE, it is respectfully submitted that the petition should be granted.

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